

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sarah Turner	Team: Team # 2	CCRB Case #: 200615038	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 11/11/2006 12:30 AM	Location of Incident: Broadway between Rockaway Avenue and Decatur Street	Precinct: 73	18 Mo. SOL 5/11/2008	EO SOL 5/11/2008	
Date/Time CV Reported Sat, 11/11/2006 7:32 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 11/11/2006 7:32 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An officer			
2. POM Timothy Schultz	10651	934158	073 PCT
3. POM Justin Caballero	30884	932392	073 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Hatice Dirlik	28978	934186	073 PCT
2. POM James Rivera	12095	925988	073 PCT
3. SGT Carmine Cenatiempo	01343	897173	073 PCT
4. POM Martin Gimenez	22916	933804	073 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Timothy Schultz	Abuse: PO Timothy Schultz stopped the car in which § 87(2)(b) was an occupant.	
B.POM Timothy Schultz	Force: PO Timothy Schultz pointed his gun at § 87(2)(b)	
C.POM Justin Caballero	Abuse: PO Justin Caballero searched the car in which § 87(2)(b) was an occupant.	
D.POM Timothy Schultz	Force: PO Timothy Schultz used physical force against § 87(2)(b)	
E.POM Justin Caballero	Force: PO Justin Caballero struck § 87(2)(b) with a blunt instrument.	
F.POM Timothy Schultz	Force: PO Timothy Schultz struck § 87(2)(b) with an asp.	
G. An officer	Force: An officer struck § 87(2)(b) with a blunt instrument.	
H.POM Justin Caballero	Force: PO Justin Caballero used physical force against § 87(2)(b)	
I.POM Timothy Schultz	Force: PO Timothy Schultz used pepper spray against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
J.POM Timothy Schultz	Discourtesy: PO Timothy Schultz spoke obscenely to § 87(2)(b)	
K.POM Timothy Schultz	Force: PO Timothy Schultz used physical force against § 87(2)(b)	
L.POM Timothy Schultz	Abuse: PO Timothy Schultz threatened § 87(2)(b) with the use of force.	
M.POM Timothy Schultz	Abuse: PO Timothy Schultz refused to provide his shield number to § 87(2)(b)	
N.POM Justin Caballero	Abuse: PO Justin Caballero refused to provide his shield number to § 87(2)(b)	
O. An officer	Abuse: An officer refused to provide his name and/or shield number to § 87(2)(b)	
P. An officer	Force: An officer used physical force against § 87(2)(b)	
Q.POM Timothy Schultz	Abuse: PO Timothy Schultz strip-searched § 87(2)(b)	
R. An officer	Abuse: An officer strip-searched § 87(2)(b)	

Synopsis

On November 11, 2006, § 87(2)(b) § 87(2)(b) § 87(2)(b) called 911 about an incident involving his acquaintance, § 87(2)(b). That same date, § 87(2)(b) § 87(2)(b)'s sister, § 87(2)(b) § 87(2)(b) filed a complaint with the CCRB via the call processing system. The complaint was assigned IAB log number 06-38286 and was investigated by Group 54. § 87(2)(g) § 87(2)(g).

On November 11, 2006, at approximately 12:30 a.m., § 87(2)(b) § 87(2)(b) was driving his Nissan Maxima on Decatur Street in Brooklyn when PO Justin Caballero and PO Timothy Schultz pulled him over under suspicion of marijuana and reckless driving (allegation A). He alleged that PO Schultz pointed his gun at him and ordered him out of the vehicle (allegation B). PO Caballero then searched § 87(2)(b) § 87(2)(b)'s vehicle (allegation C). § 87(2)(b) § 87(2)(b) alleged that PO Schultz forcefully pulled him out of the vehicle, then threw him against the trunk of his car (allegation D). § 87(2)(b) § 87(2)(b) was brought to the rear of his Maxima at which point he alleged that PO Schultz and another officer hit him on the back of the head with the butts of their guns and with batons (allegations E, F, and G). He alleged that an officer also kicked him in the mouth and that he was pepper-sprayed (allegations D, H, and I). § 87(2)(b) § 87(2)(b) also alleged that when he approached the officers on § 87(2)(b) § 87(2)(b)'s behalf, PO Schultz told him to "Get the fuck out of here," pushed him, and threatened to pepper-spray him (allegations J, K, and L). § 87(2)(b) § 87(2)(b) alleged the officers frisked § 87(2)(b) § 87(2)(b) and that he asked the officers for their shield numbers, to which an officer responded sarcastically, "Come and get it" (allegations M, N, and O). The officers then drove away and § 87(2)(b) § 87(2)(b) called 911. § 87(2)(b) § 87(2)(b) was arrested for grand larceny, reckless endangerment in the second degree, resisting arrest, and criminal possession of marijuana. He alleged that an officer slapped him in the car on the way to the precinct (allegation P). He alleged that at the precinct, he was told to take off all of his clothes, including his underwear (allegations Q and R). § 87(2)(b) § 87(2)(b) sustained a laceration to the back of his head for which he was treated at § 87(2)(b) § 87(2)(b). He received seven staples for his injuries.

§ 87(2)(g) § 87(2)(g)

§ 87(2)(g) § 87(2)(g)

§ 87(2)(g)

Summary of Complaint

§ 87(2)(b)

On November 30, 2006, § 87(2)(b) was interviewed at the CCRB (enclosures 7Q-W). He provided a detailed phone statement on November 27, 2006 (enclosure 7P) and filed a notice of claim on January 31, 2007 (enclosures 7X-BB). § 87(2)(g)

On November 11, 2006, § 87(2)(b) was driving his 1998 black Nissan Maxima (a four-door sedan) on Decatur Street in Brooklyn at approximately 12:30 a.m. All of the windows on § 87(2)(b)'s car, with the exception of the front and back windshields, are tinted to a legal degree. § 87(2)(b) was by himself on his way home to § 87(2)(b) in Jamaica, Queens and was coming from his friend's shop on § 87(2)(b) and § 87(2)(b). He made no stops after leaving his friend's shop. § 87(2)(b) denied consuming any alcohol or drugs, stating that he does not smoke (cigarettes or marijuana) and never has since he was a chronic asthmatic when he was younger. § 87(2)(b)'s medical records state a history of alcohol and tobacco. § 87(2)(b) was contacted on June 13, 2007, at which point he was asked about the alcohol and tobacco listed in his medical records. He stated that he did not know why the social history listed that he was smoking and drinking; the doctor never asked him about that. He vehemently denied smoking at all due to his chronic asthma and stated that he was not drinking on that day.]

§ 87(2)(b) was approaching the intersection of Broadway and Decatur Street when a marked police car turned on its lights and sirens indicating he should pull over. There was a car parked on the corner near the intersection so § 87(2)(b) could not pull over on that block so he turned right on Broadway and immediately pulled over on the right side of the road. § 87(2)(b) stated that the area is mostly residential but is not very busy traffic-wise at that time of night and is under the trestle of the J train tracks. He did not notice any other cars or people in the area. [In his notice of claim, § 87(2)(b) alleged that he was at a full stop awaiting a traffic signal change when the officers summoned him to exit his car.]

As soon as he pulled over, § 87(2)(b) rolled down his window and reached for his wallet, which was in his back right pocket. § 87(2)(b) has automatic windows, and he rolled them down to show the officers who was in the vehicle and what he was doing because his windows are tinted, and then he turned off his car. He stated that he has been pulled over before and he always takes his wallet out right away in order to hand over his license. § 87(2)(b) did not have anything else in the car with him except for his car keys, which were in the ignition, and his cell phone, which was in a charger near the steering wheel. § 87(2)(b) thought he may have seen a marked police car earlier stopped at the light at the intersection before Broadway on Decatur, but he was not sure and could not say if it was the same police car. § 87(2)(b) was not aware of committing any traffic violations and he stated that he was not speeding, nor could he have been because the road is very bumpy and is "all torn up."

An officer (PO1) ran up to § 87(2)(b)'s driver's side window with his gun drawn and a second officer (PO2) approached the car on the passenger side and shined a flashlight into the window. [In his phone statement, § 87(2)(b) said that both officers had their guns drawn.] § 87(2)(b) assumed that PO1 was driving the police car because he approached from that side but he was not sure. There may have been a third officer, which § 87(2)(b) heard of later. PO1 immediately stuck his hand through § 87(2)(b)'s window and pressed his gun against § 87(2)(b)'s left eye socket. § 87(2)(b) attempted to ask the officers what the problem was but PO1 immediately told him to shut up and get out of the vehicle. § 87(2)(b) did not reach out the window or grab at PO1 at any point. He was not sure what PO2 was doing. The officers appeared irate to § 87(2)(b). PO1 tried to pull § 87(2)(b) out of his vehicle so § 87(2)(b) opened the latch on the door with his right hand, which still held his wallet, in order to prevent being pulled out of the car through the window. PO1 opened the door, reached around immediately and pressed the gun against § 87(2)(b)'s eye again. PO1 was telling § 87(2)(b) to shut up and get to the back of the car. [In his notice of claim, § 87(2)(b) alleged that as he opened his door, "officers hit (him) on the head and temple with gun butt (sic), then proceeded to drag (him) out of his car by excessive and unnecessary force causing serious permanent personal injuries, to the head face, jaw and mouth."]

PO1 pulled § 87(2)(b) by his right arm to the back of the car and a second officer placed a gun against the back of his head. PO1 and possibly another officer slammed § 87(2)(b) against the trunk of his car using their hands. When § 87(2)(b) was slammed against the car, his face and chest made contact with the vehicle and he caught himself with his palms on the trunk, which caused him to drop his wallet in the process and it landed on the trunk. He did not sustain any injuries at that point. PO1 still had the gun against § 87(2)(b)'s head and he felt the second gun pressed against the back of his head. § 87(2)(b) turned his head to the left in order to ask PO1 why he was doing that to him and point out that his wallet and identification were right there for the officers to see. As § 87(2)(b) did this, PO1 struck § 87(2)(b) on the right side back of his head with his gun. § 87(2)(b) did not know how PO1 hit him on the right side of his head (since PO1 was on his left) but he stated that his trunk is only 3 ½" high and PO1 was standing over him, so he could have hit him anywhere. § 87(2)(b) was dazed as a result of this blow and his head started bleeding. He fell to his right hand and right knee on the ground and an officer kicked him in the mouth. § 87(2)(b) could not tell who kicked him or from what direction. § 87(2)(b)'s upper lip broke open and he fell facedown on the ground with his whole body (face and chest) touching the street.

The officers then started hitting § 87(2)(b) at least four or five times on his head with what he thought was both guns and nightsticks. § 87(2)(b) was lying on the ground and he tried to block some of the blows by covering his head with his hands, causing injuries (cuts and bruises) to his hands. The officers also kicked § 87(2)(b) on his lower back and stomped on it. [In his phone statement, § 87(2)(b) alleged that the officers were hitting him with the sticks on his back, head, and neck, and that they kicked his side and stomped on his back.] § 87(2)(b) was also yelling at the officers, "Why you all doing this? Why you all doing this? Alright! Alright!" He put his own hands behind his back; at no point did any officer try to get his arms behind his back. The officers handcuffed § 87(2)(b) who was bleeding and could not see due to the blood running into his face. § 87(2)(b) heard someone (he thought it was an officer) say, "Don't spray him!" § 87(2)(b)'s left shoulder was then pulled back and he was pepper-sprayed in the face. § 87(2)(b)'s eyes were then burning and he was choking from the spray. The officers picked up § 87(2)(b) by his arms and put him in the back of the police car. § 87(2)(b) could not tell if additional officers responded at the scene, nor could he tell if he was placed in the same car that stopped him. As he was being put in the police car, § 87(2)(b) heard an officer tell a different officer to drive § 87(2)(b)'s car to the precinct. He did not know what happened with his wallet, but he later got it, his keys, and his car back. When § 87(2)(b) was in the police car, he tried to wipe off his eyes on the back of the driver's seat of the car because the spray was still on his face and was affecting him. He heard someone in the car say, "He just wiped his face on your jacket!" and felt someone slap him, but he could not tell from which direction the slap came. § 87(2)(b) did not recall if there was an officer in the back seat of the car with him.

When he got to the precinct, he was taken in front of the desk and then privately searched. § 87(2)(b) thought it was the same officers who brought him in that searched him, and he stated that the officers who searched him made him take all of his clothes off, including pull his underwear down to his knees, and then had him redress. [In his phone statement, he said the officers who "strip-searched him" were the same officers that had brought him in, and none of them had any physical contact with him when he was being "strip-searched."] § 87(2)(b) was then placed in the cell, where he remained for a few minutes before an ambulance came to transport him to § 87(2)(b). § 87(2)(b) had complained that his head was still bleeding and the officers must have called for an ambulance to come before he was searched because one arrived shortly after he was searched. § 87(2)(b) was not provided water at any point to wash out his eyes. He was treated with seven staples to one of the cuts on the back of his head and x-rays were taken of his shoulder because it was swollen. There were no torn ligaments in his shoulder, but his (rotator) cuff was bruised and he was provided an arm sling to wear. § 87(2)(b)'s back also hurt, for which he was supposed to have an MRI but had not had one at the time of his interview. § 87(2)(b)'s left pinky finger and right pointer finger were also cut and had visible scars at the time of his interview, and there was a visible scar on the back of his head. [In his phone statement, § 87(2)(b) stated he had not been back to work since the incident and still was suffering from headaches and body pain.] He also sustained a bruise to his shoulder, he thought from when the officers were hitting him with nightsticks. § 87(2)(b) thought that he might have lost consciousness at some point during the incident because he "felt numb" after the

first initial blow, but he was not sure. He also defecated and urinated on himself at some point during the incident. [In his notice of claim, § 87(2)(b) alleged that the officers referred to him by “racist slurs,” and that due to the “physical and mental attacks and trauma” he defecated on himself.]

§ 87(2)(b) was charged § 87(2)(a) 160.50 § 87(2)(b) found out that he had been accused of smoking marijuana in his vehicle, which he denies and he took a diagnostic drug test to disprove this. He also heard that it had been alleged that the officers had chased him for ten blocks, but his friend’s shop is no more than ten blocks from where he was pulled over and may not even be that far. § 87(2)(b) found out from the DA in court that § 87(2)(a) 160.50 charge was in reference to an allegation that he had pulled the badge off of one of the officer’s uniforms and stated, “You’re nothing without this.” § 87(2)(b) denied this action and stated that he used to wear a badge for work and feels as though there would have been damage to the badge if he had pulled it from either the uniform or a chain if it had been around the officer’s neck. In relation to the § 87(2)(a) 160.50 charge, § 87(2)(b) stated that the only thing he had done was covering his head to protect it from the blows. § 87(2)(b) denied ever cursing at the officers at all during the incident.

§ 87(2)(b) stated that the whole incident happened for no reason and he estimated that the time between when he was first pulled over to when he was first struck with the gun was no more than 25 seconds. § 87(2)(b) also pointed out that if he were in fact speeding and smoking marijuana at that time of night with tinted windows rolled up on his vehicle, that it would be highly unlikely that an officer could see that. § 87(2)(b) stated that he found out that there was a man who witnessed the whole thing and that man called Internal Affairs. § 87(2)(b) thought the man’s name was § 87(2)(b) § 87(2)(b) and he told IAB that there were three officers. § 87(2)(b) was shown photos when he spoke with IAB at 10 a.m. on November 11, 2006 and he stated that they took photos of his injuries. § 87(2)(b) had many officers stay with him while he was at the hospital and he had a hard time describing the officers because of being disoriented from being hit and because he saw so many while was in custody. § 87(2)(b) thought one of the officers who initially took him to the hospital might have been one of the officers involved in the incident. On November 11, 2006, in the morning the officers let § 87(2)(b) s fiancée bring him a change of clothes so he could remove the soiled clothes. The arresting officer gave § 87(2)(b) s fiancée his property (wallet, keys, and cell phone) but no vouchers had been given and she did not need to sign anything nor did she explain that she was § 87(2)(b) s fiancée. § 87(2)(b) did not get much of chance to see the officers’ faces. § 87(2)(b) has a scab in the middle of the back of his head and one on the left side of his head, in addition to the scar from the staples. [In his notice of claim, § 87(2)(b) alleged that he sustained dislocated left jawbones, concussions to the head, injuries to the neck and back, as well as pain and suffering of both body and mind.]

§ 87(2)(b) On December 6, 2006, § 87(2)(b) § 87(2)(b) an § 87(2)(b) whose street name is “§ 87(2)(b) was interviewed at the CCRB (enclosures 9E-I). On November 10, 2006, § 87(2)(b) had finished work around 11:50 p.m. § 87(2)(b). From his depot in Ridgewood Queens on Fresh Pond Road near Putnam Avenue, he stopped at a pool hall on Myrtle and Wilson to pick up a friend. § 87(2)(b) did not have anything to drink, nor did he take any drugs, and he estimated he was at the pool hall for 10 minutes. § 87(2)(b) took his friend to § 87(2)(b) and § 87(2)(b) and dropped the friend at a party. § 87(2)(b) then drove on § 87(2)(b) to the intersection of Decatur Avenue and Broadway. It was approximately 12:30 a.m. on November 11, 2006 by that point. Near the middle of the block on Broadway, § 87(2)(b) saw a marked police car and an individual who had been pulled over in a dark green Maxima. § 87(2)(b) did not think there was tinting on the windows of the Maxima but he stated that the J train runs on an elevated track over the area and it was fairly dark except for a business across the street which was lit at the time. § 87(2)(b) drives a grey 1999 GMT Yukon SUV with tinted windows and he rolled down his passenger window. As he passed the car that was pulled over, § 87(2)(b) saw that he knew the driver “from around the way,” but he only knows his name as § 87(2)(b) “§ 87(2)(b) or “§ 87(2)(b). The driver was not doing anything nor was he smoking anything, and § 87(2)(b) did not believe that § 87(2)(b) smokes anything in general. There was one officer approaching on the driver’s side of the vehicle and two on the passenger side, but they did not have their guns drawn from what § 87(2)(b) saw. § 87(2)(b) decided to pull over to the corner of Rockaway Avenue and Decatur Street (approximately three car lengths past the Maxima) to see what was going on and to potentially vouch for

§ 87(2)(b) if need be. As soon as he pulled over, § 87(2)(b) got out of his vehicle and walked on the sidewalk to where § 87(2)(b) and the police were.

§ 87(2)(b) estimated that it took less than a minute for him to park and walk back. While § 87(2)(b) approached, he noticed three white male officers beating § 87(2)(b) who was standing in the middle of the street on the passenger side of the police car. § 87(2)(b) saw the officers using a gunmetal-colored handgun and a baton to beat § 87(2)(b) in the head. § 87(2)(b) described the baton as an extendable black wand with a ball on the end. § 87(2)(b) saw an officer (PO1, male, white, short, black hair, wearing NYPD windbreaker) beating § 87(2)(b) with the handle of the gun and a second officer (PO3, male, white, short, black hair, wearing NYPD windbreaker) beating § 87(2)(b) with the baton and he estimated § 87(2)(b) was hit two or three times on back of the head with the gun and approximately four times on the back of the head with the baton. PO1 held the gun as if to shoot it and lifted it over his head, coming down on § 87(2)(b)'s head from above.

§ 87(2)(b) fell to the ground and was screaming, "Why you all doing this to me, why you all doing this to me?" Either PO1 or PO3 was repeatedly telling § 87(2)(b) to "Shut the fuck up" and calling him a "motherfucker." § 87(2)(b) stated that all of the officers were cursing. As § 87(2)(b) fell, PO2 (male, white, spiky brownish/reddish hair, chubby, wearing NYPD "biker" shirt, fatigue pants, NYPD windbreaker, determined from the investigation to be PO Timothy Schultz) pepper-sprayed him in the face. § 87(2)(b) was quiet after that. § 87(2)(b) did not see anything in § 87(2)(b)'s hands at any point. § 87(2)(b) called to the officers, "Excuse me, I know this gentleman." PO Schultz turned to § 87(2)(b) and told him to "Get the fuck out of here." PO Schultz pushed § 87(2)(b) with both hands on § 87(2)(b)'s chest and § 87(2)(b) stumbled back. § 87(2)(b) repeated that he knew the man, put his hands up, § 87(2)(b) and told PO Schultz to calm down. PO Schultz told him, "I don't care who you are, get the fuck out of here." PO Schultz pointed a can of pepper spray at § 87(2)(b)'s face. PO Schultz told § 87(2)(b) to get out of there before he sprayed him. § 87(2)(b) took a step back and explained that he was not "messing with" whatever the officers were doing, but he knew § 87(2)(b). § 87(2)(b) believes that PO Schultz was trying to turn his attention from what was happening with § 87(2)(b).

While § 87(2)(b) was interacting with PO Schultz, PO1 and PO3 stood § 87(2)(b) up and had him against the trunk of the police car, patting him down but not going into his pockets, and then PO Schultz told the officers, "Let's go, let's go, let's go!" § 87(2)(b) stated that there were five or six people who came from all over the area and had also stopped and were watching the incident, but they did not get involved and § 87(2)(b) did not know who they were. § 87(2)(b) looked for some paper but did not find any so he pulled out a dollar bill and wrote down the police car number, which a woman shouted to him § 87(2)(b) did not recall this number at his interview, but he provided number 2362 in his initial complaint to the CCRB]. The officers proceeded to throw § 87(2)(b) in the back of the police car. The left side of § 87(2)(b)'s head was bleeding and white foam was coming down the side of his head § 87(2)(b) thought it was from the pepper spray). § 87(2)(b) was approximately 10-15 feet from § 87(2)(b) at that point. He did not say anything directly to § 87(2)(b) at any point. As soon as they put § 87(2)(b) in the car, the officers drove off. One of them (either PO1 or PO3) drove § 87(2)(b)'s Maxima and the other two were in the police car, with PO Schultz driving. As the officers were leaving, § 87(2)(b) asked for the officers badge numbers and the officer in the passenger seat of the police car (either PO1 or PO3) sarcastically told him to "Come and get it." The officers then drove away. § 87(2)(b) did not see any items left on the scene. § 87(2)(b) immediately called 911 from his cell phone to request assistance. § 87(2)(b) told the 911 operator that officers had beaten his friend and then put in a car. § 87(2)(b) provided the car number to the 911 operator and he told the operator that he was going to go to the precinct to see what was going on. The operator asked § 87(2)(b) if the officers were still on the scene and he told her no and she asked him if he wanted a supervisor to be sent to the scene, which he declined. The operator provided him a number to call back later about the complaint.

§ 87(2)(b) then went to the 73rd Precinct (still in uniform) and asked to speak to the supervisor. As he was standing there, § 87(2)(b) saw two of the officers (PO Schultz and either PO1 or PO3) talking to the desk sergeant, (male, white, wearing a blue uniform shirt with a gold badge and three stripes on his arm). § 87(2)(b) heard one of the officers whisper that he was one of the witnesses, then all three of the

officers went into the back (including the desk sergeant). § 87(2)(b) waited for ten minutes and the desk sergeant came back and put his head down. § 87(2)(b) asked the desk sergeant if he was a supervisor and the desk sergeant asked him what it was in reference to. § 87(2)(b) explained that it was in reference to the man who was brought in that the officers had beaten. The desk sergeant told § 87(2)(b) that it had nothing to do with him. § 87(2)(b) explained that it did have something to do with him because one of the officers pushed him and they beat his friend. § 87(2)(b) explained that he wanted the officers' badge numbers so he could file a complaint against them. The desk sergeant told § 87(2)(b) to mind his business because the incident had nothing to do with him. § 87(2)(b) asked the desk sergeant if he was refusing to provide the badge numbers and the desk sergeant asked § 87(2)(b) to describe the officers. § 87(2)(b) told the desk sergeant not to play games and that it was the two officers he had just spoken with. § 87(2)(b) told the desk sergeant that if his (the desk sergeant's) friend had been beaten, he would be at the precinct too and the desk sergeant stated that he did not have those types of friends. § 87(2)(b) felt that was a racist comment, but the desk sergeant did not make any references to race specifically.

§ 87(2)(b) felt as though he was being given the run-around and the two of them exchanged words until the desk sergeant told § 87(2)(b) to call IAB. § 87(2)(b) called 911 again and he spoke with a lieutenant, who took the information and called § 87(2)(b) back to inform him that they had § 87(2)(b) in custody and the officers were claiming all sorts of things. The lieutenant told § 87(2)(b) they would follow-up with him. An ambulance came to the precinct for § 87(2)(b). The officers sneaked § 87(2)(b) out the back of the precinct and § 87(2)(b) saw the same car he had seen at the incident following the ambulance. § 87(2)(b) called a mutual friend of his and § 87(2)(b)'s and got the contact information for § 87(2)(b)'s mother. § 87(2)(b) went to the mother's house and told them what happened. § 87(2)(b)'s father rushed to § 87(2)(b) and § 87(2)(b) also went to the hospital. § 87(2)(b)'s cousin informed § 87(2)(b) that § 87(2)(b)'s head was bashed open and he had stitches. Two days later, two sergeants came to § 87(2)(b)'s workplace (depot) and recorded an interview with him. § 87(2)(b) felt that he had been treated like a "thug" at the precinct and he felt that the officers had been disrespectful. § 87(2)(b) had not seen how § 87(2)(b) got from the Maxima to the police car, nor did he see § 87(2)(b) grab any of the officers. § 87(2)(b) did not curse at any of the officers, neither on the scene nor at the precinct. § 87(2)(b) spoke to § 87(2)(b) about the complaint, but only to say that he had witnessed it and provide his information for the complaint (they did not discuss the details). § 87(2)(b) estimated that the incident lasted 10-15 minutes. He did not at any point push or shove the officer who pushed him and he did not physically intervene at all.

Results of Investigation

Identification of Officers

The IAB Log lists PO Timothy Schultz, PO Justin Caballero, PO Hatice Dirlik, PO James Rivera, and Sgt. Carmine Cenatiempo as subject officers. The 73rd Precinct roll call lists all of these officers as working conditions along with PO Corey Martinez and PO Frank Rinaldi on the date of the incident. PO Schultz is listed as the arresting officer on § 87(2)(b)'s OLBS and he identified PO Caballero as being his partner. § 87(2)(b) viewed a photo array on March 26, 2007, which included all of the aforementioned officers except PO Dirlik, who is female (enclosures 9G-R). From that array, § 87(2)(b) identified PO Schultz as the officer who pushed him, cursed at him, and threatened him, and PO Caballero as one of the officers who was beating § 87(2)(b) with a baton or a gun. The medical records list PO "Gimez" as having transported § 87(2)(b) to the hospital with PO Caballero. PO Martin Gimenez was identified as working at that time and with a similar shield number as the officer in question.

Attempts were made to show § 87(2)(b) additional photos in an effort to identify the third officer in the incident. He was contacted on June 13, 2007, at which time he stated that he would call the undersigned back to schedule an appointment to view photos. § 87(2)(b) was left additional messages on June 15, 18, and 27, 2007, and July 11, 13, and 16, 2007. He was sent please call to view photos letters on June 19 and 27, 2007, which were not returned to the CCRB. § 87(2)(b) left a message on the undersigned's voicemail on July 8, 2007, stating that he already identified the officers that he could recognize and he did not know why he needed to view more photos. In the message left for him on July 16, 2007, the

undersigned informed him that if he did not contact the CCRB by July 20, 2007, the case may be closed without his viewing further photos. As of the date of this report, § 87(2)(b) has not contacted the CCRB to view additional photos, § 87(2)(g).

Officers Not Interviewed

PO Hatice Dirlik is listed as being in the same car as PO Schultz according to the roll call, but PO Dirlik is a female officer and neither § 87(2)(b) nor § 87(2)(b) described a female officer as being at the incident at all. PO Schultz and PO Caballero both stated that they were the only two officers involved in the incident.

Subject Officers' Statements

PO Justin Caballero and PO Timothy Schultz

PO Justin Caballero was interviewed at the CCRB on February 6, 2007 (enclosures 10A-C). PO Timothy Schultz was interviewed at the CCRB on February 28, 2007 (enclosures 12I-K). § 87(2)(g)

PO Caballero and PO Schultz were working from 6:00 p.m. on November 10, 2006 until 2:35 a.m. on November 11, 2006. They were dressed in uniform and assigned to conditions auto in marked patrol car #2362, which PO Schultz was driving. PO Schultz described himself as being 5'11" tall and 240 lbs. and he described PO Caballero as being 5'7" tall and 160 lbs. PO Caballero did not have his memo book with him on the date of his interview but PO Schultz read the following entries from his memo book into the record: "00:30 one under (arrest). Arrest # § 87(2)(b) (enclosures 12A-B).

PO Caballero and PO Schultz stated that on November 11, 2006 at approximately 12:30 a.m. they were on routine patrol in their marked patrol car on Saratoga Avenue heading southbound. PO Schultz observed a Nissan Maxima traveling the same direction at a high rate of speed, swerving in and out of traffic. The speed limit was 20 mph and the Maxima was traveling at 50 mph. PO Schultz recalled the Maxima almost struck a pedestrian crossing Saratoga Avenue. PO Caballero stated that his attention was not focused on the road at that time but PO Schultz said all of a sudden, "I'm going to pull this guy over." PO Caballero then observed the Maxima swerving from one side of the road to the other. PO Caballero explained that the decision to stop this vehicle was initially PO Schultz's, and he did not know what PO Schultz's intention was in stopping the car. However, as soon as PO Caballero witnessed the erratic way the car was driving, he decided as well to pull the car over.

PO Schultz recalled that he pulled up to the right of the Maxima at a red traffic light and at that time he observed the driver (a black male determined from the investigation to be § 87(2)(b) smoking a lit marijuana cigarette. PO Schultz stated that the front windows of the Maxima were open and he could see and smell the marijuana. [PO Caballero did not make this observation nor did he state that they pulled up next to the Maxima at any point.] PO Caballero recalled the Maxima as having tinted windows but PO Schultz stated that he did not know if the windows were tinted because they were rolled down. As soon as the light turned green, PO Schultz pulled behind the Maxima and activated his lights. He did not recall using his siren or PA system but both officers stated that the Maxima did not pull over right away.

The Maxima pulled over eventually at Broadway and Rockaway Avenue, under the J train tracks. PO Schultz approached the driver's side and PO Caballero approached the passenger's side with his flashlight out; neither of them had their guns drawn. When asked why he did not have his gun drawn, PO Schultz explained that he did not fear for his safety. PO Caballero stated that the driver immediately rolled down both front windows, at which point he observed a marijuana cigarette burning in the ashtray and smelled the strong, distinct odor of marijuana. [PO Schultz already stated that the windows were rolled down when he observed the Maxima at the stoplight.] PO Caballero described the marijuana cigarette as being wrapped in brown cigar paper with the green marijuana inside. [PO Schultz also observed the marijuana cigarette still lit in the ashtray, which he described as being a rolled joint with white rolling papers.] PO Schultz believed § 87(2)(b) was very intoxicated because of his glassy eyes and unawareness of what was going on, but he could not smell any alcohol on § 87(2)(b)'s breath because § 87(2)(b) had sprayed perfume

to mask the smell of marijuana and the fact that he had been drinking. [PO Schultz could smell the perfume but PO Caballero made no mention of such observation.]

PO Schultz asked § 87(2)(b) to step out of the car and informed him that he was under arrest. He did not recall if he informed him of what he was under arrest for and PO Caballero was not aware at that point of why PO Schultz had asked § 87(2)(b) to step out of his car. PO Schultz took § 87(2)(b) to the rear of the vehicle but he denied pointing his gun at § 87(2)(b)'s head at any point and PO Caballero did not see PO Schultz physically pull § 87(2)(b) out of the car. PO Caballero immediately entered the car through the passenger-side door, extinguished the marijuana cigarette, and placed it in his pocket. He could not see or hear what was happening with PO Schultz and § 87(2)(b) and he began to search the vehicle, looking in the area around the driver's seat and the rear seats. He explained that he did so because he has been taught that "where there's drugs, there's usually more drugs or weapons," and he was looking for more contraband. He did not search the vehicle that thoroughly before he heard "a commotion" or what sounded like a "tousling."

While PO Caballero was searching § 87(2)(b)'s vehicle, PO Schultz attempted to handcuff § 87(2)(b) at the rear of his Maxima. He told § 87(2)(b) to put his hands behind his back, at which point § 87(2)(b) stopped complying with PO Schultz and began resisting. He said something to the effect of, "You're not shit without this," and ripped PO Schultz's shield off of his shirt, throwing it to the ground (it was later recovered). PO Schultz's uniform shirt was ripped down the left side and he later vouchered it as evidence. § 87(2)(b) then began punching PO Schultz several times in the left arm, attempting to hit him in the head but PO Schultz ducked to avoid the blows. At that point, PO Caballero abandoned his search and went to see what the commotion was. He observed § 87(2)(b) punching PO Schultz, neither of whom was saying anything. [PO Schultz stated he was hit three to four times in the arm; PO Caballero estimated that § 87(2)(b) punched PO Schultz six or seven times in the face and torso.]

In response to the punches, PO Schultz took out his asp and began hitting § 87(2)(b) repeatedly, he believed on the arms. [PO Caballero did not recall where PO Schultz was hitting § 87(2)(b) or if the asp made contact, but he estimated PO Schultz struck § 87(2)(b) no more than twice.] When questioned, PO Schultz stated that his understanding of using an asp is "blows to the body," and he did not recall hitting the individual on the head with the asp, stating that he was not trained to hit people on the head. § 87(2)(b) (who PO Schultz described as having a size advantage over him at 6'2" tall and 250 lbs.) continued to fight with PO Schultz after the blows. He pushed PO Schultz to the ground with his hands open-palm on PO Schultz's chest. [PO Caballero described him as grabbing PO Schultz's upper arms and shoving him to the ground.] The asp went flying out of PO Schultz's hands as he fell, but PO Schultz did not sustain any injuries as a result of the fall.

PO Caballero approached § 87(2)(b) and put him in a bear hug from behind. As a result, both PO Caballero and § 87(2)(b) tripped and fell to the ground, but PO Caballero could not recall exactly how they tripped or how they fell. When PO Schultz got up, he saw PO Caballero rolling around on the ground with § 87(2)(b). PO Caballero tried to restrain § 87(2)(b)'s arms while § 87(2)(b) was both trying to punch PO Caballero and stiffening his arms to prevent being handcuffed. [PO Schultz stated § 87(2)(b) was flailing his arms.] Both officers denied punching or kicking § 87(2)(b) or striking him with a gun or flashlight. PO Caballero did not draw any of his weapons. PO Schultz took out his pepper spray and pepper-sprayed § 87(2)(b) two times in "spurts" from a distance of three feet. § 87(2)(b) continued to fight around on the ground but "calmed down a bit" and the pepper spray was effective enough for the officers to be able to handcuff him. [PO Caballero did not recall whether PO Schultz used any pepper spray and he did not have any indication, such as the smell or taste of pepper spray, that pepper spray was used. When it was noted that the arrest report indicates that a chemical agent was used, PO Caballero still stated that he did not know.]

As soon as the officers handcuffed § 87(2)(b) they placed him in the back of their patrol car. PO Caballero recalled a "big crowd" of approximately 15 people had formed in the area. They were yelling and screaming, but PO Caballero did not recall what they were saying. He did not observe any member of the crowd attempt to interfere with the arrest. No crowd member asked PO Caballero or PO Schultz for their names and shield numbers and no one stated that they knew § 87(2)(b) or were a friend of his.

Both officers denied pushing or threatening to pepper-spray anyone on the scene. Both officers denied calling § 87(2)(b) a “motherfucker” or telling him to “Shut the fuck up,” and PO Caballero stated that neither he nor PO Schultz told anyone to “Get the fuck out of here” or used any profanity. PO Caballero recalled that a marked patrol car with two officers inside from a command other than the 73rd Precinct arrived, but they did not take any police action. It was noted that the UF 61 indicates that Sgt. Cenatiempo was the “supervisor on the scene,” but PO Caballero stated that Sgt. Cenatiempo never arrived on the scene. [PO Schultz did not recall other officers on the scene and he did not recall any other civilians around, stating that he was “too busy with the perp.”]

The officers left immediately after they handcuffed § 87(2)(b). PO Caballero drove the Maxima to the stationhouse. [PO Schultz stated that both he and PO Caballero brought § 87(2)(b) back to the stationhouse and he did not recall what happened to the Maxima, but he thought that someone came back for it.] PO Schultz denied slapping § 87(2)(b) and he stated that PO Caballero did not slap him either. He did not recall § 87(2)(b) wiping his face on a jacket. PO Schultz stated that § 87(2)(b) was not frisked or searched on the scene because they wanted to get him medical treatment. He recalled that § 87(2)(b) was bleeding but he did not know where from, nor was he aware that § 87(2)(b) had an injury to the back of his head. [PO Caballero noticed § 87(2)(b) was bleeding from the back of his head, but he could not see the wound, nor did he know how § 87(2)(b) sustained it.]

At the stationhouse, PO Caballero noticed that PO Schultz’s shield had been ripped off, and PO Schultz informed him that § 87(2)(b) had ripped it off, but PO Caballero did not observe this happen. PO Caballero conducted a thorough search of the Maxima, including the trunk, but he did not find any further contraband. Both officers stated that they did not know if § 87(2)(b) was strip-searched and PO Schultz stated that he did not search § 87(2)(b) but he was searched by another officer (he did not know who). PO Schultz did not recall § 87(2)(b) urinating or defecating on himself. PO Schultz was shown § 87(2)(b)’s arrest report but he did not know why the asp is not listed on it as being used, and he stated that he did not fill out the arrest report or know who did because “a lot was going on.” Neither PO Schultz nor PO Caballero was seriously injured as a result of the incident; PO Schultz had redness and swelling on his right shoulder from the punches and PO Caballero stated that nothing major happened to PO Schultz. PO Caballero was aware at the time of his interview that there was a concurrent IAB investigation. Upon direct questioning, PO Caballero stated that the IAB had seized all of his weapons for tests but the tests came back negative.

Witness Officer’s Statement

PO James Rivera

On February 28, 2007, PO James Rivera was interviewed at the CCRB (enclosures 11E-F). PO Rivera was working from 6:00 p.m. on November 10, 2006 until 2:35 a.m. on November 11, 2006. He was dressed in uniform and assigned to the 73rd Precinct conditions unit with PO Justin Caballero and PO Timothy Schultz. PO Rivera explained that conditions officers address the conditions of the precinct and respond to radio runs when assigned. PO Rivera, PO Caballero, and PO Schultz were in marked patrol car 2362, of which PO Rivera was in the backseat. PO Rivera had no entries in his memo book relating to the incident but he read the following entries into the record: “At 23:05 I had a car stop on the corner of Atlantic and Monaco. At 23:10 I had 1 under (arrest) in regards to that car stop and at 23:20 I was administrative at the 73 precinct. I ended my tour at 05:15” (enclosures 11A-B).

On November 10, 2006, PO Rivera had an arrest at 11:10 p.m. and remained at the precinct until approximately 4:00 a.m. on November 11, 2006 (enclosures 11C-D). His partners resumed patrol but did not have a third officer with them. The officers’ supervisor on that date was Sgt. Cenatiempo but he was in a different vehicle and PO Rivera thought it was only the three of them (himself, PO Caballero, and PO Schultz) assigned to conditions. PO Rivera was not aware of his partners making an arrest later that day and he did not observe any arrestees that were brought in after his, nor did he have any contact. PO Rivera was not aware of any individuals coming to the precinct in order to file a complaint and he stated that he was in a different area from where civilians would come in to file a complaint. PO Rivera was not involved in this incident at all.

PO Martin Gimenez

On August 2, 2007, PO Martin Gimenez was interviewed at the CCRB (enclosures 13C-D). PO Gimenez recalled working from 7:30 p.m. on November 10, 2006, until 4:05 a.m. on November 11, 2006. He was dressed in uniform and assigned to a foot post by himself. PO Gimenez had a memo book entry of an arrest at 21:00 hours on November 10, 2006 (enclosures 13A-B). He had no recollection of the incident whatsoever.

PO Gimenez did not recall leaving the stationhouse at all after his arrest or transporting a prisoner to the hospital, and he stated that he was doing arrest processing. His arrestee was not injured. PO Gimenez was shown but did not recognize § 87(2)(b)'s ACR listing a "PO Gimez" on it. He did not know of anyone else whose name would match that but he stated that there is another "Gimenez" in the precinct. He was not sure if PO Gimenez was working on that date or if he is still working at the 73rd Precinct, but there had been confusion in the past between him and the other "Gimenez." PO Gimenez was shown but did not recognize § 87(2)(b)'s arrest photo. PO Gimenez was not aware of anyone being brought into the stationhouse with injuries and he did not recall any other arrestees being brought in on that date.

Sgt. Carmine Cenatiempo

On August 17, 2007, Sgt. Carmine Cenatiempo was interviewed at the CCRB (enclosures 14C-D). Sgt. Cenatiempo was working from 5:45 p.m. on November 10, 2006, until 2:42 a.m. on November 11, 2006, dressed in uniform and assigned to supervise the conditions unit in the 73rd Precinct. He was partnered with PO Hatice Dirlik and assigned to marked patrol car #2362. He did not recall if he was the operator or the recorder on that date. Sgt. Cenatiempo did not have any memo book entries relating to this incident, and he did not have any entries around the time of the incident (12:30 a.m.). Sgt. Cenatiempo had no recollection of this incident.

Sgt. Cenatiempo did not recall assisting with any arrests on November 11, 2006, and he did not recall what he was doing in general. Sgt. Cenatiempo did not recall PO Rivera making any arrests on that date but he stated that PO Rivera was probably working with PO Caballero and PO Schultz. If PO Rivera had been with PO Schultz and PO Caballero when he made his arrest, they would not have had another officer replace him, and they would never take another officer (non-conditions) from the precinct with them on their jobs. Sgt. Cenatiempo was not aware of PO Schultz or PO Caballero making calls for assistance on that date.

Sgt. Cenatiempo did not recognize the name § 87(2)(b) nor did he recognize § 87(2)(b)'s arrest photo. He verified his name on the UF61 but he stated that it just means that he verified the arrest and although he may have responded to the arrest, he did not recall responding. Sgt. Cenatiempo did not recall any arrestee having a laceration or injuries. He was not aware of anyone being strip-searched on that date, which the desk sergeant most likely would have approved. He explained that if he were in the precinct, he could authorize a strip-search, but most likely it would be the desk sergeant who would do it. Sgt. Cenatiempo did not recall seeing PO Schultz with damage to his uniform on that date, and he did not recall seeing him after he made the arrest of § 87(2)(b).

Medical Records

§ 87(2)(b)'s medical records including the ACR were obtained from § 87(2)(b) (enclosures 15B-Z). The ACR lists bleeding, pain, and soft tissue injury to § 87(2)(b)'s head as a result of blunt force in an assault/fight. EMS dressed his wound. The narrative of his ACR states: "§ 87(2)(b) male awake, alert, and oriented, found sitting in jail cell of 73rd Precinct complains of pain to top of head with approximately 2 inch laceration and bleeding. Patient states he was injured when being arrested by police officers. Patient denies neck or back pain. Upon physical examination: approximately 2-inch laceration to top of head and bleeding...Transported to hospital under police escort." The chief complaint listed is "My head is hurting me and I'm bleeding." The presumptive diagnosis was an open soft tissue injury and blunt force.

The chief complaint listed on § 87(2)(b)'s triage form states: "He was hit with a back of gun sustained a laceration to back of head." He was brought in by ambulance and NYPD officers Caballero and Simez.

The narrative of his initial exam states: § 87(2)(a)

§ 87(2)(b) s social history lists alcohol and tobacco. His pain intensity is 10 out of 10. He had a three-centimeter post scalp abrasion and mild swelling and tenderness to his left shoulder. The initial impression was a left shoulder contusion (bruising) but no fracture or dislocation, and a scalp laceration. A CT scan revealed there was no intracranial bleeding and x-rays of his shoulder and humerus showed no fractures or dislocations. His head laceration was irrigated and § 87(2)(b) was provided lidocaine and seven staples. He was discharged in police custody

§ 87(2)(b) saw § 87(2)(b), § 87(2)(b), multiple times in § 87(2)(b). His records were obtained from these visits (enclosures 13AA-JJ). According to these records, § 87(2)(b) s chief complaints were headaches and trouble sleeping after the incident. There was some swelling around the area of the injury and he had seven staples in his head.

On § 87(2)(b), § 87(2)(b) submitted to a hair sample drug test going back 12 months (enclosures 13KK-RR). The results of that test came back negative for marijuana, cocaine and its derivatives, opiates, amphetamines, and PCP. Hair sample tests are permissible in courts and the undersigned found information that indicates that the test detects traces longer in darker (black) hair, because the higher level of melanin allows drug compounds to bind more easily to the hair, § 87(2)(g). The traces begin to show up in hair after about a week and can be detected in hair on any part of the body for the life of the hair or until it is cut. § 87(2)(b) s sample came from his underarm, a place where it is unlikely he would have cut the hair.

Medical Examiner Consultation

§ 87(2)(a)

Police Documents

IAB Case File

Internal Affairs (IAB) is concurrently investigating this incident. The IAB case file was obtained on September 13, 2007, and has been incorporated into the CCRB case file. As of the date of this report the IAB case is still open and under investigation. Included in the case file were photo arrays shown to § 87(2)(b) and § 87(2)(b) and the medical treatment of prisoner report. Neither § 87(2)(b) nor § 87(2)(b) identified officers as a result of the photo arrays, and the medical treatment of prisoner report only states that § 87(2)(b) was treated for a laceration to the back of his head. The case file also included several photos of § 87(2)(b) (enclosures 8B-K). One of the photos shows a bruise to the inside of § 87(2)(b) upper lip, § 87(2)(g) (enclosure 8F). There are photos of § 87(2)(b) naked from the waist up (both sides and front and back). There are no contusions visible on either arm (enclosures 8G-H).

UF 61

According to UF 61 § 87(2) (complaint report), § 87(2)(b) was arrested and charged § 87(2)(a) 160.50 by PO Timothy Schultz. Sgt. Cenatiempo was the supervisor on the scene. The narrative states: § 87(2)(a)

§ 87(2)(b) Sector A of the 73rd Precinct covers the area of the arrest (the northeast corner of Broadway and Rockaway Avenue). Marijuana was vouchered as evidence under voucher number § 87(2)(b) (enclosures 12C-D).

Arrest Report

The arrest report for § 87(2)(b) lists PO Schultz as his arresting officer (enclosures 12E-H). It states:

§ 87(2)(a) 160.50

§ 87(2)(b) is listed as being injured and admitted to the hospital and a chemical agent was used against him “to overcome assault.” § 87(2)(b) was charged § 87(2)(a) 160.50

Arrest Vouchers

A marijuana cigarette was vouchered as arrest evidence as was PO Schultz’s uniform shirt, which is listed as being ripped (enclosures 19A-B).

Roll Call

The roll call for the 73rd Precinct for tour 1 on November 11, 2006 was obtained (enclosures 18A-E). Sgt. Carmine Cenatiempo is listed as supervising the conditions unit, which consisted of PO Timothy Schultz, PO Justin Caballero, PO Hatice Dirlik, PO James Rivera, PO Corey Martinez, and PO Frank Rinaldi.

Command Log

The command log for the 73rd Precinct was obtained (enclosure 17A). It lists PO Schultz as arresting § 87(2)(b) at 12:50 a.m. § 87(2)(a) 160.50. § 87(2)(b) had a laceration to his head. He was taken to § 87(2)(b) at 1:15 a.m. and IAB was notified. Sgt. Cenatiempo verified the arrest.

Fleet Services

According to the fleet services info, car #2362, a white 2006 Crown Victoria, was used by the 73rd Precinct on November 11, 2006 (enclosure 24A).

Civilian Conviction Histories

§ 87(2)(b) [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civil Lawsuit

§ 87(2)(b) filed a civil lawsuit against the City of New York for the sum of \$50 million on § 87(2)(b) (enclosures 7X-BB). The outcome of the lawsuit is still pending. As of the date of this report, no 50H hearing has been held.

Civilian CCRB Histories

§ 87(2)(b) was a complainant/victim in CCRB § 87(2)(g)

§ 87(2)(b) He has no other CCRB cases.

§ 87(2)(b) was a witness in CCRB § 87(2)(b) but has no other CCRB cases (enclosure 3B).

Subject Officers’ CCRB Histories

PO Timothy Schultz has been employed with the NYPD for three years and has no prior substantiated CCRB allegations (enclosure 2A). PO Justin Caballero has been employed with the NYPD for three years and has no prior substantiated CCRB allegations (enclosure 2B).

Conclusions and Recommendations

Undisputed Facts

On November 11, 2006, PO Timothy Schultz and PO Justin Caballero pulled over § 87(2)(b) on Broadway. He was taken to the rear of his vehicle after which PO Schultz hit him several times with an asp. PO Schultz also pepper-sprayed § 87(2)(b) and § 87(2)(b) was arrested. § 87(2)(b) § 87(2)(b) an acquaintance of § 87(2)(b)s, witnessed him being pulled over and went over to see what was going on. He witnessed § 87(2)(b) being hit with the asp and pepper-sprayed. He called 911 as a result and also went to the precinct. § 87(2)(b) was charged § 87(2)(a) 160.50 § 87(2)(b). He was treated for a laceration to the back of his head at § 87(2)(b), for which he received seven staples.

Facts in Dispute

§ 87(2)(g)

Assessment of the Evidence

PO Schultz stated that he initially noticed § 87(2)(b) driving erratically and smoking marijuana, which he both saw and smelled through his open window. § 87(2)(b) denied using any marijuana and he voluntarily submitted to a hair sample drug test, § 87(2)(g). The results of the test came back negative for marijuana, cocaine and its derivatives, opiates, amphetamines, and PCP. § 87(2)(b) also stated that his windows, which are tinted, were rolled up prior to him being stopped. § 87(2)(g) PO Schultz stated that it was a rolled joint with white rolling papers but PO Caballero stated that the marijuana was wrapped in brown cigar paper, like a blunt. Both of them stated that it was still burning when they pulled § 87(2)(b) over, and PO Caballero stated that he put it in his pocket. § 87(2)(g)

PO Schultz denied pointing his gun at § 87(2)(b) when he initially stopped him, § 87(2)(b), § 87(2)(g)

§ 87(2)(b) When asked why he did not point his gun at § 87(2)(b) PO Schultz stated that he did not fear for his safety. Both he and PO Caballero stated that § 87(2)(b) punched him, but PO Caballero stated § 87(2)(b) punched PO Schultz six or seven times in the face and torso and PO Schultz stated he was punched three or four times on his arm. There is no assault charge listed on the arrest report or UF 61 and PO Schultz did not fill out an AIDED or Line of Duty Injury paperwork. § 87(2)(g)

PO Schultz admitted to hitting § 87(2)(b) with his asp multiple times but denied hitting him on his head and PO Caballero could not recall where PO Schultz hit § 87(2)(b) with the asp. Neither PO Schultz nor PO Caballero could account for § 87(2)(b)s head wound. PO Schultz also could not recall what happened with § 87(2)(b)s car but PO Caballero stated that he drove it back to the stationhouse. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g) Both § 87(2)(b) and § 87(2)(b) stated that there were three officers involved, which would account for there being two officers in the patrol car transporting § 87(2)(b) as stated, and one driving § 87(2)(b)s car to the stationhouse.

§ 87(2)(b), § 87(2)(g) § 87(2)(b) stated that he witnessed the officers hitting § 87(2)(b) with asps and the butt of their guns. Although he admitted to knowing § 87(2)(b) and speaking to him about the incident, they both stated that they did not know each other's real names and § 87(2)(b) was initially unaware that § 87(2)(b) even witnessed the incident; § 87(2)(b) filed a complaint himself on § 87(2)(b)'s behalf. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

PO Caballero described the struggle as § 87(2)(b) both trying to punch him and stiffening his arms to prevent being handcuffed § 87(2)(g). He also stated that § 87(2)(b) was kicking his legs, but none of the punches or kicks landed. PO Schultz stated that § 87(2)(b) had a size advantage over him (at three inches taller and ten pounds heavier) and § 87(2)(b) was able to push PO Schultz over, but PO Caballero, who is seven inches shorter and 100 pounds lighter than § 87(2)(b) single-handedly was able to force him to the ground. § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

PO Caballero recalled a marked patrol car with two officers inside from a command other than the 73rd Precinct arrived, but they did not take any police action and PO Schultz did not recall any other officers on the scene because he was "too busy with the perp."

PO Schultz's statement that he hit § 87(2)(b) on his arms with the asp would account for any contusions or bruising on § 87(2)(b)'s arms, § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

The medical examiner's report could not determine what caused the injuries, however, the medical examiner did point out that § 87(2)(b)'s and § 87(2)(b)'s statements of what happened were consistent with the injuries. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

He mentions early on to the hospital not only being hit on the head with the butt of a gun but also that he was kicked in the mouth; both of which he stated in his initial phone statement, CCRB interview, and notice of claim as well. § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Undated photos included in the IAB case file show a bruise on § 87(2)(b)'s upper lip, § 87(2)(b), § 87(2)(g). No bruises or contusions are visible in the photos of his body, § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Although § 87(2)(b)'s medical records indicate a social history of tobacco, § 87(2)(b) himself did not know why this was listed in his social history; he claimed that the doctor never asked him those questions and again firmly denied ever smoking anything due to his asthma. Aside from that, the tobacco usage is not smoking-specific; § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegations Not Pleaded

§ 87(2)(b) alleged that § 87(2)(b) was frisked on the scene. § 87(2)(b) did not make this allegation and was under arrest when the frisk allegedly occurred, § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b) also alleged that all three officers were calling § 87(2)(b) a "motherfucker" and telling him to "Shut the fuck up." § 87(2)(b) did not make these allegations himself

§ 87(2)(g) § 87(2)(b) alleged that he was thrown against the back of his trunk and that further physical force was used, § 87(2)(g) § 87(2)(b) alleged that at the precinct he asked the desk officer for the shield numbers of two of the officers who had been at the scene of the incident. The desk officer did not provide that information to § 87(2)(b) § 87(2)(g) According to Patrol Guide Procedure 203-09 (enclosure 1A-B) officers are required only to provide their own names and shield numbers upon request. § 87(2)(g) In his notice of claim, § 87(2)(b) alleged that the officers referred to him by “racist slurs,” but he made no mention of this in his phone statement or formal interview statement to the CCRB, and no specifics are made as to what the racist slurs were in the claim. § 87(2)(g)

Allegation A: PO Timothy Schultz stopped the car in which § 87(2)(b) was an occupant.

§ 87(2)(b) did not know why he was pulled over initially, as he had not been speeding, nor was he committing any traffic violations to his knowledge. He alleged that the officers immediately ordered him out of his vehicle and gave no reason as to why they stopped him; he found out later that he had been charged § 87(2)(a) 160.50. PO Schultz stated that he observed (both saw and smelled) § 87(2)(b) smoking marijuana while driving, which is why he initially followed him; then § 87(2)(b) began driving erratically and was speeding § 87(2)(g). Both officers stated there was a lit marijuana cigarette in the ashtray when they pulled § 87(2)(b) over. While there was marijuana vouchered in relation to this incident, § 87(2)(g) PO Schultz described it as being a rolled joint with white rolling papers and PO Caballero described it as being green marijuana wrapped in brown cigar paper (like a blunt). Additionally, § 87(2)(b) voluntarily submitted to a hair sample drug test, which goes back further than a urine or blood test, and which came back negative. § 87(2)(b), § 87(2)(g)

Allegation B: PO Timothy Schultz pointed his gun at § 87(2)(b)

§ 87(2)(b) alleged that as soon as PO Schultz approached him, PO Schultz put his gun up to § 87(2)(b)'s eye and physically removed him from the car. PO Schultz denied pointing his gun at § 87(2)(b) but had he witnessed § 87(2)(b) driving erratically, § 87(2)(b), § 87(2)(g)

Allegation C: PO Justin Caballero searched the car in which § 87(2)(b) was an occupant.

§ 87(2)(b) did not specifically make this allegation, but he did state that he heard an officer tell another officer to drive his car to the precinct, § 87(2)(g)

PO Caballero admitted to searching the vehicle, stating that he did so because the marijuana was in plain view, and he was trained that where there are drugs, there are usually more drugs or weapons, and he was looking for more contraband. He searched the areas around the driver's seat and the rear seats, but did not have a chance to thoroughly search the vehicle. § 87(2)(b), § 87(2)(g)

Allegation D: PO Timothy Schultz used physical force against § 87(2)(b)

Allegation H: PO Justin Caballero used physical force against § 87(2)(b)

§ 87(2)(b) alleged that PO Schultz physically pulled him out of his Maxima, brought him to the rear, and threw him against the trunk. § 87(2)(b) stated that he was later kicked in the mouth by an officer, but he did not know which one. He fell to the ground, at which point the officers kicked him on his lower back and stomped on it. He was yelling to the officers, “Why you all doing this? Why you all doing this? Alright, alright!” § 87(2)(b) also made these allegations in his phone statement and his medical records, and § 87(2)(b) stated that he heard § 87(2)(b) say, “Why you all doing this to me? Why you all doing this to me?” while the officers were beating him, although § 87(2)(b) did not allege that officers were kicking § 87(2)(b). While the officers admitted to physically struggling with § 87(2)(b), PO Schultz and PO Caballero denied kicking or punching § 87(2)(b). The officers sustained no injuries during this alleged struggle; § 87(2)(b) sustained contusions to his left shoulder and a laceration to the back of his head. § 87(2)(b) and § 87(2)(b) both denied that § 87(2)(b) was struggling with the officers. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation E: PO Justin Caballero struck § 87(2)(b) with a blunt instrument.

§ 87(2)(b) alleged that PO Schultz struck him on the back of the head with a gun, but he stated the blow came from his right side and PO Schultz was on his left. § 87(2)(b) alleged that PO Caballero and another officer who looked similar to PO Caballero were hitting § 87(2)(b) with a gun and an asp on the back of his head but he could not tell which officer was which. PO Caballero and PO Schultz both denied hitting § 87(2)(b) with a gun, but they could not account for the two-inch laceration he sustained, which according to his medical records appeared to be the result of blunt force, as alleged by both he and § 87(2)(b). § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation F: PO Timothy Schultz struck § 87(2)(b) with an asp.

§ 87(2)(b) alleged that the officers struck him on the back of his head at least four or five times with what he thought was both guns and nightsticks. § 87(2)(b) alleged that officers struck § 87(2)(b) on the back of the head at least two or three times with a gun and approximately four times with an extendable black metal baton (an asp). PO Schultz admitted to using an asp against § 87(2)(b) but stated that he was taught to strike someone with an asp on their body, not on the head. PO Schultz did not recall hitting § 87(2)(b) on the head and PO Caballero did not recall where PO Schultz was hitting § 87(2)(b) or if the asp made contact. § 87(2)(b) sustained a two-inch laceration on the back of his head, § 87(2)(b), § 87(2)(g).

§ 87(2)(b), § 87(2)(g)

Allegation G: An Officer struck § 87(2)(b) with a blunt instrument.

§ 87(2)(b) alleged that he was struck on the back of his head with what he thought was both guns and nightsticks. § 87(2)(b) stated that PO Caballero and an officer who resembled PO Caballero were hitting § 87(2)(b) with a gun and a nightstick, but he could not tell which officer was using what, even after viewing photos and identifying PO Caballero as being one of the subject officers. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation I: PO Timothy Schultz used pepper spray against § 87(2)(b)

§ 87(2)(b) alleged that he was already handcuffed when he was pepper-sprayed; § 87(2)(b) stated that § 87(2)(b) was pepper-sprayed as he fell to the ground. PO Schultz stated that § 87(2)(b) was still struggling with PO Caballero when he pepper-sprayed him, but even when he was shown the arrest report

listing a chemical agent as being used, PO Caballero did not recall any pepper spray being used. [REDACTED]

§ 87(2)(b), § 87(2)(g)

Allegation J: PO Timothy Schultz spoke obscenely to § 87(2)(b)

Allegation K: PO Timothy Schultz used physical force against § 87(2)(b)

Allegation L: PO Timothy Schultz threatened § 87(2)(b) **with the use of force.**

§ 87(2)(b) alleged that he approached the officers to vouch for § 87(2)(b) and in response PO Schultz told him to “Get the fuck out of here.” PO Schultz then pushed him with both hands on his chest, causing him to stumble backward. § 87(2)(b) repeated that he knew § 87(2)(b) § 87(2)(b)

PO Schultz told him, “I don’t care who the fuck you are, get the fuck out of here.” PO Schultz then pointed a can of pepper spray at § 87(2)(b)’s face, telling § 87(2)(b) to get out of there before he sprayed him. PO Schultz did not recall any other civilians as being on the scene, but PO Caballero stated that a crowd of approximately fifteen people had gathered as a result of the incident. § 87(2)(b), § 87(2)(g)

Allegation M: PO Timothy Schultz refused to provide his shield number to § 87(2)(b)

Allegation N: PO Justin Caballero refused to provide his shield number to § 87(2)(b)

§ 87(2)(b) alleged that he asked the officers for their shield numbers as they were leaving and one of them sarcastically told him to “Come and get it.” He then went to the precinct in order to try and obtain this information, which the desk sergeant would not provide (see above Allegations Not Pleaded section). Not one of the officers provided his shield number to § 87(2)(b) and the officers drove away immediately after the incident. PO Schultz did not recall any civilians being in the area, and both he and PO Caballero denied refusing to provide their names and/or shield numbers to anyone on the scene.

§ 87(2)(b), § 87(2)(g)

Allegation O: An Officer refused to provide his shield number to § 87(2)(b)

§ 87(2)(b) alleged that he asked the officers for their shield numbers as they were leaving and one of them sarcastically told him to “Come and get it.” He then went to the precinct in order to try and obtain this information, which the desk sergeant would not provide (see above Allegations Not Pleaded section). Not one of the officers provided his shield number to § 87(2)(b) and the officers drove away immediately after the incident. § 87(2)(b), § 87(2)(g)

Allegation P: An Officer used physical force against § 87(2)(b)

§ 87(2)(b) alleged that while he was in the patrol car on the way to the 73rd Precinct, he wiped his eyes on the back of the driver’s seat because the pepper spray was still affecting him. An officer (he could not tell which one) said, “He just wiped his face on your jacket!” § 87(2)(b) then felt someone slap him, but he could not tell which direction the slap came from and since he had been pepper-sprayed, he could

not see which officer had slapped him. Both officers denied this allegation. Since the pepper spray affected § 87(2)(b)'s vision at the time, he could not see to identify the officer who committed this alleged action, and since it occurred in the patrol car, § 87(2)(b) was not a witness to it. § 87(2)(g)

Allegation Q: PO Timothy Schultz strip-searched § 87(2)(b)

§ 87(2)(b) stated that the officers who brought him in made him take all of his clothes off, including pull his underwear down to his knees, § 87(2)(g). According to Patrol Guide Procedure 208-05, "a search at a police facility (not a "strip" search) includes the removal of **outer garments** such as overcoats, jackets, sweaters, vests, hats, wigs, ties, belts, shoes and socks, handbags, and wallets" [Emphasis added.] (enclosures 1A-B). It does not include undershirts, pants, or underwear. PO Caballero and PO Schultz did not know if § 87(2)(b) was strip-searched and PO Schultz stated that he did not search § 87(2)(b) at the precinct; a different officer searched him but PO Schultz did not know who. § 87(2)(b), § 87(2)(g)

Allegation R: An officer strip-searched § 87(2)(b)

§ 87(2)(b) stated that the officers who brought him in were the ones who strip-searched him. § 87(2)(b), § 87(2)(g)

§ 87(2)(b) alleged that there was a third officer on the scene, who resembled PO Caballero and who may have been the second officer in the car that transported § 87(2)(b) to the precinct, but he could not identify this officer when shown photos of potential subject officers. PO Caballero stated that he drove § 87(2)(b)'s car to the precinct; § 87(2)(b), § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: